

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1756 OF 2004

IN

CRIMINAL APPEAL NO.521 OF 2004

1. Ishwar Piraji Kalpatri

...Applicants.

V/s

1. The State of Maharashtra
and Anr.

...Respondents.

Ms. Varsha Palav for the applicant.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 22nd September, 2004

P.C.

1. Applicant has filed Criminal Appeal No.521 of 2004 against the Judgment and Order of the Small Causes Court dated 17/7/2003. By the said Judgment and Order, the Small Causes Court attached the applicant's properties and securities to the tune of Rs 4,63,365/- and directed that it should be confiscated to the Government. However, attachment in respect of the other securities and properties as per order dated 28/4/1989 was raised.

2. In this application, applicant is seeking stay of the order dated 17/7/2003. Applicant is also seeking appropriate directions from this Court. It is

submitted by the learned Counsel appearing on behalf of the applicant that the impugned order dated 17/7/2003 was passed by the Small Causes Court without giving hearing to the applicant and without serving a copy of the petition which was filed by the respondents on 25/4/2003. It is submitted that the applicant had made an application for restoring the petition and for setting aside the ex parte order. However, no order was passed by the Small Causes Court. It is further submitted that the Chief Judge of the Small Causes Court did not pass any specific order relating to the remaining assets which were clubbed by the respondents. It is submitted that the grave and irreparable loss would be caused to the applicant if the stay of the impugned order is not granted. It is further submitted that the Chief Judge did not take into consideration the order passed by the High Court dated 23/8/2001 whereby it had dismissed the Appeal No.998 of 1989 and had ordered the release of entire assets.

3. In my view, taking into consideration the facts and circumstances of the case and particularly in view of the fact that the order passed is an ex parte order without giving any hearing to the applicant, prima facie case is made out for grant of stay.

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Accordingly, ad-interim relief in terms of prayer
clauses (b) and (c) of this application is granted.

V.M. KANADE, J.